

Prob 12C

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

**PETITION FOR WARRANT OR SUMMONS FOR
OFFENDER UNDER SUPERVISION**

Offender Name: David Norman AGUIRRE

Docket Number: 2:05CR00051-01

Offender Address: Meadow Vista, California

Judicial Officer: Honorable Kimberly J. Mueller
United States Magistrate Judge
Sacramento, California

Original Sentence Date: 10/13/2005

Original Offense: 21 USC 844(a) - Possession of Controlled Substance
(CLASS A MISDEMEANOR)

Original Sentence: 12 month term Prejudgment Probation

Special Conditions: Warrantless search; Participate in substance abuse
treatment, including testing, with a monthly co-pay up to
\$25, as directed by the probation officer.

Type of Supervision: Prejudgment Probation

Supervision Commenced: 10/13/2005

Assistant U.S. Attorney: Misdemeanor Unit **Telephone:** (916) 554-2700

Defense Attorney: Federal Defender **Telephone:** (916) 498-5700

Other Court Action: None

RE: David Norman AGUIRRE
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PETITIONING THE COURT

(X) OTHER: David Norman Aguirre is ordered to appear before the Court on Thursday, March 23, 2006, at 2 p.m., to show cause why supervision heretofore granted should not be revoked. The probation officer is hereby directed to notify the probationer and counsel of said hearing.

The probation officer alleges the probationer has violated the following condition(s) of supervision:

Charge Number Nature of Violation

Charge 1: NEW LAW VIOLATION (POSSESSION OF A FIREARM)

On February 9, 2006, in Placer County Superior Court, Case Number 62-56987, David Norman Aguirre was convicted by nolo contendere plea for violation of 12025(a)(1) of the California Penal Code - Having Concealed Firearm in Vehicle, a misdemeanor, in violation of the general condition not to commit another crime.

Charge 2: POSSESSION OF A FIREARM

On December 24, 2005, in Placer County, California, the probationer was found in possession of a loaded .357 Colt revolver and live ammunition by a Placer County Deputy Sheriff, in violation of the general condition not to possess a firearm.

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Charge 3: UNLAWFUL USE OF A CONTROLLED SUBSTANCE
(AMPHETAMINE/METHAMPHETAMINE)

On December 13, 2005, the probationer submitted a urine specimen to Community Recovery Resources, Grass Valley, California, which tested positive for amphetamine/methamphetamine, indicating unlawful use of that controlled substance, in violation of the general condition prohibiting the use of controlled substances.

Justification: Mr. Aguirre has had difficulty since commencing supervision by demonstrated instability and sporadic non-compliance with his conditions. However, after his December 24, 2005, arrest (which he failed to timely report to the probation officer, but he did inform his substance abuse counselor), he obtained full-time employment as a local truck driver and actively participates in twice-weekly substance abuse treatment at Community Recovery Resources in Grass Valley. He has not missed any testing or treatment, nor tested positive for substance abuse since December 13, 2005. Unfortunately, the fact of his possession of a firearm is a mandatory revocation violation.

Bail/Detention: It is respectfully recommended the probationer remain at liberty pending violation proceedings in this matter. The probationer is not viewed as an imminent danger to the community or a flight risk.

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I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED ON: March 14, 2006
Roseville, California
:thb/cd

Respectfully submitted,

/s/ Thomas H. Brown

THOMAS H. BROWN
United States Probation Officer
Telephone: (916) 786-6147

REVIEWED BY: /s/ Richard A. Ertola
RICHARD A. ERTOLA
Supervising United States Probation Officer

RE: David Norman AGUIRRE
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THE COURT FINDS PROBABLE CAUSE AND ORDERS:

- ☐ The issuance of a warrant ☐ Bail set at \$ ____ ☐ No Bail
- ☐ The issuance of a summons (copy to Defense Counsel).
- ☒ Other: David Norman Aguirre is ordered to appear before the Court on Thursday, March 23, 2006, at 2 p.m., to show cause why supervision heretofore granted should not be revoked. The probation officer is hereby directed to notify the probationer and counsel of said hearing.

FURTHER PROCEEDINGS REGARDING CUSTODY:

- ☐ Defendant is ordered detained, to be brought before District Judge forthwith.
- ☒ Initial appearance and detention hearing before Magistrate Judge.

Dated: March 14, 2006.


UNITED STATES MAGISTRATE JUDGE

cc: United States Probation
Misdemeanor Unit, United States Attorney's Office
Federal Defender's Office

Attachment: Presentence Report (Sacramento only)

**STATEMENT OF EVIDENCE OF ALLEGED
PROBATION VIOLATIONS**

Honorable Kimberly J. Mueller
United States Magistrate Judge
Sacramento, California

RE: David Norman AGUIRRE
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Your Honor:

In addition to a copy of the **Prejudgment Probation Conditions and Acknowledgment of Conditions of Probation and Receipt of Criminal Judgment**, the following evidence and/or testimony will be offered to support the probation officer's allegation that the above-named probationer is in violation of the conditions of supervision as stated on the attached Probation Form 12C - Petition for Warrant or Summons for Offender Under Supervision.

Charge 1: NEW LAW VIOLATION (POSSESSION OF A FIREARM)

A. Evidence:

- (1) Placer County Superior Court Arraignment/Plea/Judgment and Sentence, Case Number 62-56987, dated February 9, 2006, for David Norman Aguirre, represented by counsel, stating conviction by nolo contendere plea to a misdemeanor violation of California Penal Code 12025(a)(1) - Having Concealed Firearm in Vehicle.

B. Witnesses:

- (1) None

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Charge 2: POSSESSION OF A FIREARM

A. Evidence:

- (1) Placer County Sheriff Crime/Incident Report Number 05-8433, dated December 24, 2005, charging David Norman Aguirre with Carrying a Concealed Firearm in a Vehicle, and Carrying a Loaded Firearm in a Vehicle, to wit: a loaded Colt .357 magnum revolver and other loose ammunition - found in his vehicle during a property inventory search subsequent to impound of the vehicle for expired registration and Mr. Aguirre not having a valid driver's license in his possession.

B. Witnesses:

- (1) None

Charge 3: UNLAWFUL USE OF A CONTROLLED SUBSTANCE (AMPHETAMINE/METHAMPHETAMINE)

A. Evidence:

- (1) Chain of Custody for Drug Analysis for Specimen Number A00215483, dated December 13, 2005, for a urine specimen submitted by David Aguirre to Community Recovery Resources, Grass Valley, California, and Scientific Testing Laboratory Inc. Report Results of Controlled Substance Test for that urine specimen indicating confirmed positive results for amphetamine and methamphetamine use.
- (2) A written admission by the probationer dated December 29, 2005, admitting his use of amphetamine/methamphetamine on December 13, 2005.

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B. Witnesses:

(1) None

Respectfully submitted,

/s/ Thomas H. Brown

THOMAS H. BROWN
United States Probation Officer

DATED: March 13, 2006
Roseville, California
thb:cd

REVIEWED BY: /s/ Richard A. Ertola
RICHARD A. ERTOLA
Supervising United States Probation Officer

REVOCATION GUIDE - PROBATION

Offender Name: David Norman AGUIRRE **Docket Number:** 2:05CR00051-01

Date of original offense: 10/13/2005

Statutory maximum imprisonment for original offense: 1 year

Highest grade of violation alleged: C

Criminal History Category of offender: I

Original guideline range: 0 to 6 months.

Chapter 7 range of imprisonment: 3 to 9 months.

Violation requires mandatory revocation: YES: X NO: ____.

Original offense committed after 09/13/94: Court may sentence up to the statutory maximum for the original offense. Court must consider but is not bound by Chapter 7 ranges. Reasons for the length of revocation sentence should be stated on the record.

MANDATORY REVOCATION ISSUES

Original offense committed after 09/13/94: Title 18 USC 3565 instructs that supervision shall be revoked upon a finding of: 1) Possession of a firearm; 2) Possession of a controlled substance; or, 3) Refusal to comply with mandatory drug testing. If the violation involves the use of a controlled substance, the Court has the discretion to find that "use" constitutes "possession."

Positive/Failed Drug Tests after 11/02/2002: Title 18 USC 3565 amended and instructs that supervision be revoked for: Testing positive for illegal controlled substances more than three times over the course of one year.

March 13, 2006
thb:cd